
TO AMEND THE CHINA TRADE ACT OF 1922

FEBRUARY 17 (calendar day, FEBRUARY 21), 1925.—Ordered to be printed

Mr. JONES of Washington, from the Committee on Commerce, submitted the following

REPORT

[To accompany H. R. 7190]

The Committee on Commerce, to whom was referred the bill (H. R. 7190) to amend the China trade act, 1922, having considered the same, report favorably thereon, and recommend that the bill do pass without amendment.

The House report shows clearly the changes made by the House bill in the existing law, and it therefore is made a part of this report.

[House Report No. 321, Sixty-eight Congress, first session]

The Committee on the Judiciary, to whom was referred the bill (H. R. 7190) to amend the China trade act, approved September 19, 1922, after hearing and consideration, report favorably thereon with amendments, and recommend that the bill as amended do pass.

The committee amendments are as follows:

On page 2, line 21, after (d), strike out the capital "A" and insert the following: "No certificate of incorporation shall be delivered to a," and after the word "corporation" strike out "shall not engage in any business" and insert the following: "and no incorporation shall be complete."

On page 4, line 14, after the words "United States," strike out the period and the quotation marks and insert the following: "resident in China."

The primary purposes which it was contemplated this legislation would accomplish can be summarized as follows:

1. Put American interests doing business in China on an "equality" with other nationals doing business in China from the standpoint of home corporation and individual income taxation.

2. A means of inducing Chinese capital to participate with American capital in undertakings in China under American control and management.

3. Provide a uniform and practical manner for creating corporations under a Federal law to do business in China under the protection and control of American laws administered by the United States (Federal) Court for China, American consular courts in China, and a registrar of companies in China, and also to accord to such undertakings in China the greatest possible benefit from the American diplomatic and consular services in China.

The law as passed and as it now stands does not fully accomplish any of the above primary purposes and in addition is faulty and burdensome to the following extent:

1. The law is faulty in that it imposes a large measure of repetitive or double taxation on dividends paid by China trade act corporations which repetitive taxation is not imposed on the dividends of any class of American domestic corporations.

2. The law is burdensome in that it requires the withholding at source of these repetitive taxes on dividends to nonresident alien shareholders which is not required in connection with the dividends paid by any class of American domestic corporations.

3. The law is faulty in that it does not provide the full measure of American control of China trade act corporations which was intended and which is necessary for the proper and safe administration of the act.

4. The law is incomplete in that it does not provide a uniform means for Federal incorporation to engage in business within China.

In addition there are a number of provisions of the law which can be simplified and clarified which will make it more workable and useful.

The following is a summarized statement of the reasons for the proposed amendments, all of which are recommended do pass. These proposed amendments are shown in the order they occur in the law, and the references in this report will be to the sections, subdivisions, and paragraphs of the act as it now stands. From the standpoint of providing a practical manner for creating corporations under a Federal law to engage in business within China, the act is along the right lines fundamentally.

ARTICLES OF INCORPORATION.

SEC. 4. (a) **Five** Three or more individuals (hereinafter in this act referred to as "incorporators"), a majority of whom are citizens of the United States, may, as hereinafter in this act provided, form a District of Columbia corporation for the purpose of engaging in business within China.

This amendment if made effective will reduce the minimum number of incorporators from five to three. A minimum of three incorporators is allowed in the District of Columbia Code for organizing manufacturing and mercantile corporations in the District of Columbia and is the rule in most of the State incorporating laws. It has already been found in practice that requiring five incorporators for China trade act corporations means dummy incorporators for most of the smaller concerns for which there is no warrant, and therefore this amendment will be in the interest of simplicity.

SEC. 4 (b) (6). The names and addresses of *at least three* individuals (a majority of whom, *at the time of designation and during their term of office*, are citizens of the United States) **and at least one of whom is a resident of the District of Columbia**, to be designated by the incorporators, who shall serve as temporary directors; and

It is recommended this paragraph be amended by cutting out the requirement that there be a resident temporary director in the District of Columbia. In lieu of a resident temporary director in the District of Columbia new subdivision (b) of section 20 is recommended, which will require China trade act corporations to maintain in the

District of Columbia an accredited agent upon whom legal service can be secured and who shall be authorized to enter appearance for the corporation. It is felt this is a more definite and desirable arrangement and less burdensome than the present provision, which is not entirely clear as to what is intended.

This amendment also requires that there shall be not less than three temporary directors, which is the number of permanent directors required by section 9, and would make the minimum number of incorporators, minimum number of temporary directors, and minimum number of permanent directors uniformly not less than three.

SEC. 4 (b) (7). The fact that an amount equal to 25 per centum of the amount of the authorized capital stock has been in good faith subscribed [and paid in cash, or, in accordance with the provisions of section 8, in real or personal property which has been placed in the custody of the directors] to.

SEC. 4 (d). *No certificate of incorporation shall be delivered to a China trade act corporation and no incorporation shall be complete until at least 25 per centum of its authorized capital stock has been paid in in cash, or, in accordance with the provisions of section 8, in real or personal property which has been placed in the custody of the directors, and such corporation has filed a statement to this effect under oath with the registrar within six months after the issuance of its certificate of incorporation, except that the registrar may grant additional time for the filing of such statement upon application made prior to the expiration of such six months. If any such corporation transacts business in violation of this subdivision or fails to file such statement within six months, or within such time as the registrar prescribes upon such application, the registrar shall institute proceedings under section 14 for the revocation of the certificate.*

The act now requires that at least 25 per cent of the authorized capital be paid in full before certificate of incorporation can be issued. This in many instances will work a hardship and it is recommended that this paragraph be amended to require that 25 per cent of the authorized capital be in good faith subscribed to and that there be added a new subdivision (d) to section 4 which will require that at least 25 per cent of the authorized capital be actually paid in cash or in accordance with provisions of section 8 before the certificate can be delivered or incorporation completed. This will assure the real completion of the corporation, including the actual payment of the initial capital, before the concern can engage in business or float any further issue of stock. This amendment would give six months after the issue of certificate of incorporation to comply with this requirement. It is felt that this is a more desirable and safer arrangement and is therefore recommended.

SEC. 4 (c). A China trade act corporation shall not engage in the business of discounting bills, notes, or other evidences of debt, of receiving deposits, of buying and selling bills of exchange, or of issuing bills, notes, or other evidences of debt, for circulation as money; nor engage in any other form of banking business; nor engage in any form of insurance business; *nor engage in, nor be organized to engage in, the business of owning or operating any vessel, unless the controlling interest in such corporation is owned by citizens of the United States, within the meaning of section 2 of the shipping act, 1916, as amended.*

This would add the restriction that China trade act corporations engaged in owning or operating vessels shall have a majority of the stock owned by citizens of the United States, within the meaning of section 2 of the shipping act, 1916, as amended. This restriction is recommended so that China trade act shipping corporations will conform to other Federal laws and regulations as to registry of vessels,

especially those applying to vessels engaged in the shipping business in Chinese coastal and inland waters.

SEC. 6 (b). *May* Shall have a corporate seal and *may, with the approval of the Secretary, alter it [at pleasure]*:

It is recommended that this subdivision be amended to read "Shall have a corporate seal and may, with the approval of the Secretary, alter it," instead of the discretionary arrangement that China trade act corporations "may have a corporate seal and alter it at pleasure." In doing business in China a concern's seal, or its "chop," as a seal is usually called in China, is given a great deal of weight and consideration. It is felt that this stricter provision should prevail for doing business in China.

SCOPE OF BUSINESS.

While there has been a number of suggestions put forward that the scope of business permissible for China trade act corporations to engage in should be widened, no such changes have been included in the amendments now recommended. House Conference Report No. 922, to accompany H. R. 4810 (67th Cong., 2d sess.), stated the situation regarding the scope of business permissible under the law as passed as follows:

The bill as agreed to by the conference committee retains the House provision of restricting the business of a China trade act corporation to business within China and to such other business as is properly connected therewith or necessary and incidental thereto, and further requires that the principal business be such as will, in the opinion of the Secretary of Commerce, aid in developing markets in China for goods produced in the United States. The corporation is prohibited from engaging in either the banking business or the insurance business. Corresponding to the scope of business as agreed upon by the conference committee is the provision restricting the privilege of the use of the legend "Federal Inc., U. S. A.," to its use in connection with business in China conducted by a China trade act corporation or by any other corporation created under Federal law.

Instead of widening the scope of business permissible to be engaged in by China trade act corporations at the present time it is felt that it will be following a sounder policy to amend the law as proposed by H. R. 7190, which will then give an opportunity to demonstrate the merits of the primary purposes of this legislation. If in the course of time it is found desirable and permissible to widen the scope of business, this can then be done based on practical experience by the actual working of the law. It also seems proper to call attention to the fact that the widening of the scope of business permissible to be engaged in by China trade act corporations is not so much an incorporating provision as it is the working from a practical standpoint of the revenue act. The law as it now stands, together with the revenue act, gives a China trade act corporation, to a considerable extent at least, if not all of the advantages of a nonresident alien corporation in developing trade between the United States and China. It would seem from the part of Report No. 922 quoted above that a China trade act corporation should and will be accorded the right to do business in the United States to the extent that a nonresident alien corporation has the right to do business in the United States, and therefore for the present at least subject to the same Federal taxation on such business as prevails with nonresident alien corporations doing business with concerns in the United States. If in any way a China

trade act corporation handles its business to become a resident in the United States, then it should be in the same status from the question of Federal corporation taxation that an alien corporation is when it becomes resident and does business in the United States and as a result is subject to United States Federal corporation taxes on business done in this way. Assuming this is a correct statement of the situation, it was therefore felt no change should be made unless it is later found warranted by practical experience with the working of the law as it now stands in this respect. But to make the law workable in the above respects the amendments of the revenue section recommended are necessary; otherwise a China trade act corporation will be unduly handicapped both in comparison with alien corporations doing business with concerns in the United States and with all other classes of American domestic corporations.

SEC. 7. Each share of the original or any subsequent issue of stock of a China trade act corporation shall be issued at *not less than* par value [only], and shall be paid for in cash or in accordance with the provisions of section 8, in real or personal property which has been placed in the custody of the directors. No such share shall be issued until the amount of the par value thereof has been paid the corporation; and when issued, each share shall be held to be full paid and nonassessable; except that if any share is, in violation of this section, issued without the amount of the par value thereof having been paid to the corporation, the holder of such share shall be liable in suits by creditors for the difference between the amount paid for such share and the par value thereof.

It is recommended that this section be amended so that the original or any subsequent issues of stock shall be issued at not less than par value instead of the provision of the law as at present that the original or subsequent issues of stock shall be issued at par value [only]. The purpose of this provision obviously is to prevent overissue of stock against actual value. There seems no good reason, however, why a concern which wishes to be conservative as to its issue of stock should not be permitted to issue stock, particularly subsequent stock, at more than par value, thus being enabled to realize on the value of any accumulated surplus and undivided profits which may have been built up and in which new issues of stock will participate in the benefit of such accumulated value.

SEC. 9 (b). The number, qualifications, and manner of choosing and fixing the tenure of office and compensation of all directors; but the number of such directors shall be not less than three, and a majority of the directors and [a majority of the officers holding the office of president, treasurer, or secretary, or a corresponding office, shall be citizens of the United States resident in China; and] *the president and the treasurer, or each officer holding a corresponding office, shall, during their tenure of office, be citizens of the United States resident in China; and—*

It is obvious the intent of this legislation has always been that the management of corporations created under the law would be vested in citizens of the United States. This, however, is not clearly provided for in the law as it now stands, particularly the executive head and the treasurer or fiscal head of the corporation may not be American and still the requirements of the act technically complied with. To correct this it is recommended that this subdivision be amended to provide that "a majority of the directors, the president, and the treasurer or each officer holding a corresponding office shall, during their tenure of office, be citizens of the United States resident in China," thus making it mandatory that both a majority of the

directors and the president and treasurer be American citizens resident in China.

SEC. 10 (a). Within six months after the issuance of the certificate of incorporation of a China trade act corporation there shall be held a stockholders' meeting either at the principal office or a branch office of the corporation. Such meeting shall be called by a majority of the directors named in the articles of incorporation and each stockholder shall be given at least ninety days' notice of the meeting either in person or by mail. The holders of two-thirds of the voting shares *represented in person or by proxy* shall constitute a quorum at such meeting authorized to transact business. At this meeting or an adjourned meeting thereof a code of by-laws for the corporation shall be adopted by a majority of the voting shares represented at the meeting.

It is doubtful if the present wording of the act will permit proxy voting of the stock, especially until by-laws are adopted. It is felt this is desirable, and it is therefore recommended that this subdivision of the act be amended to allow voting of stock by proxy to this extent. This amendment will in no way weaken the law but will simplify this provision.

JURISDICTION OF SUITS AGAINST CORPORATION.

SEC. 20 (b). *Every China trade act corporation shall maintain in the District of Columbia a person as its accredited agent upon whom legal process may be served, in any suit brought in the Supreme Court of the District of Columbia, and who is authorized to enter an appearance in its behalf. In the event of the death or inability to serve, or the resignation or removal of such person, such corporation shall, within such time as the Secretary by regulation prescribes, appoint a successor. Such corporation shall file with the Secretary a certified copy of each power of attorney appointing a person under this subdivision, and a certified copy of the written consent of each person so appointed.*

The adding of this subdivision to section 20 has already been explained in connection with section 2 amending paragraph (6) of subdivision (b) of section 4 of the act as it now stands.

FEDERAL TAXATION.

That the law falls short of according the urgently needed relief from United States Federal taxation which will put American interests engaged in business in China upon an equal footing with British interests, their principal competitors, is very cogently stated by Mr. E. S. Cunningham, American consulate general at Shanghai, under date of November 22, 1922, in reporting the publication of the act in the November, 1922, issue of the Journal of the Associated (British) Chambers of Commerce in China and Hongkong. Mr. Cunningham's report stated the situation in part as follows:

The China trade act, as passed by Congress in September, 1922, has been republished in the British Chamber of Commerce Journal (published at Shanghai) for November, 1922. That the act should be republished is not surprising, but the particular object in inviting attention to this fact is an editorial in the same journal under the heading "Our American Competitors," as follows:

"The passing of the China trade act, 1922, by the United States Legislature is of considerable interest to British merchants in China by reason of the fact that one of the principal objects of the act is to give relief to American corporations formed for the purpose of carrying on business in China from the taxation to which they have hitherto been subjected. The act gives relief from taxation subject to certain conditions which are referred to below, and while the effect is not to bring about the same complete freedom from income tax which British firms carrying on business in China enjoy, American concerns carrying on business in China, which are in a position to avail themselves of the provisions of the act,

will be relieved, partially at least, from a handicap to which they have hitherto been subject in competing with British firms."

I have the honor to state that it is apparent from the editorial that the British competitors of the American merchant do not regard that the act brings "about the same complete freedom from income tax which British firms carrying on business in China enjoy." In other words, the American firm is not placed upon an equal footing with its British competitors. The act as passed by Congress is of great assistance to the American business man in China who is transacting business on his own, through a purely local concern, but it is deeply to be deplored that the act does not go further and place the large American concerns on an equal footing with its British competitors. In brief, it appears that capital put into business in China by an American who resides outside of China does not receive any exemption, nor can exemption be obtained by placing the stock in trust with a resident of China. It was particularly desired that the act should encourage American financial interests to invest capital here on an equal footing with that of competitors, particularly the British. It is not intended to depreciate the importance of the China trade act, because it is of wonderful assistance but it does not reach the point which those advocating the passage of such a bill desired, because it does not place American firms upon an equal footing with their competitors.

Business of great importance can not be transacted by a purely local American concern, but it must receive financial assistance from the parent company or other financial interests in the United States.

It will be noted this editorial in the Journal of the Associated British Chambers of Commerce in China and Hongkong states that the "British firms carrying on business in China enjoy complete freedom from income tax." This journal is the official publication of British interests in China, therefore this statement can be accepted as authoritative. It warrants the further statement that the British Crown colony of Hongkong imposes no corporate or individual income taxes on companies organized under the Hongkong companies ordinances whether registered in Hongkong or Shanghai. It in addition warrants the statement that no individual income taxes are imposed on British citizens when resident in Hongkong or China.

Another authoritative statement confirming the "freedom from income tax" under which British interests "carrying on business in China enjoy" is the answer given by Mr. Sydney Barton, C. M. G., registrar of British companies at Shanghai, to the following question:

Are British stockholders in British-Hongkong companies and British-China companies exempt from individual income taxes when dividends are kept in China, also when dividends are sent to England?

Registrar Barton's answer which is more comprehensive than the question, stated this situation as follows:

(a) A British-China company, not being resident or carrying on business in the United Kingdom is, as a company, not chargeable with income tax on the company's annual net profits.

(b) British subjects, shareholders in British-China companies, not resident in the United Kingdom, are not chargeable with income tax on dividends paid by such companies.

(c) British subjects resident in the United Kingdom are chargeable with income tax on dividends paid to them as shareholders in China companies irrespective of whether such dividends be remitted to the United Kingdom or kept elsewhere.

The test of incidence of the tax is "Where does the recipient reside?" and not "Where are the profits kept?"

This makes it obvious that this legislation as it now stands does not put American interests carrying on business in China on an equal footing with their British competitors, but it does not bring out the point that the law actually imposes repetitive or double taxation

on dividends paid by China trade act corporations to all stockholders (corporate or individual) except American or Chinese individual stockholders resident in China. This repetitive taxation is imposed as follows:

1. In the form of the 12½ per cent corporation tax on China trade act corporation's net or taxable income.

2. Recipients (corporate or individual) of dividends from China trade act corporations have to pay in turn income taxes in full, although such China trade act corporations have already paid the 12½ per cent corporation tax (at the source) on its taxable income.

The law as it stands gives no relief and no amendment is proposed or recommended herewith to exempt China trade act corporations from the capital stock tax of \$1 for each \$1,000 of the fair average value of the corporations' capital stock (including accumulated surplus and undivided profits) as is in excess of \$5,000.

The law as it now stands, for which no amendments are proposed, prohibits China trade act corporations from making a consolidated return with affiliated American corporations. The law as it now stands denies China trade act corporations the privilege to credit against its corporate income tax the amount of income taxes paid a foreign country. This privilege is denied no class of American domestic corporation.

It is obvious from the above that no prudent American interest, except individual American and Chinese resident in China, will invest their capital in China trade act corporations and be so penalized by this repetitive or double taxation. It is also obvious that this fault or disability should be corrected, especially as this can be done quite effectively by two amendments both applying to the additions to the revenue act of 1921 which were made by the China trade act, 1922.

CORPORATION TAX.

SEC. 21. Title II of the revenue act of 1921 is amended by adding at the end thereof a new section to read as follows:

"SEC. 264. (a) That for the purpose only of the tax imposed by section 230 there shall be allowed, in the case of a corporation organized under the China trade act, 1922, a credit of an amount equal to the proportion of the net income derived from sources within China (determined in a similar manner to that provided in section 217), which the par value of the shares of stock of the corporation owned on the last day of the taxable year by [individual citizens of the United States or China, resident in China,] (1) *persons resident in China, the United States, or possessions of the United States, and* (2) *individual citizens of the United States or China wherever resident*, bears to the par value of the whole number of shares of stock of the corporation outstanding on such date: *Provided*, That in no case shall the amount by which the tax imposed by section 230 is diminished by reason of such credit exceed the amount of the special dividend certified under subdivision (b) of this section.

"(b) Such credit shall not be allowed unless the Secretary of Commerce has certified to the commissioner (1) the amount which, during the year ending on the date of filing the return, the corporation has distributed as a special dividend to or for the benefit of such [individuals] *persons* as on the last day of the taxable year were [citizens of the United States or China, resident in China,] *resident in China, the United States, or possessions of the United States, or were individual citizens of the United States or China, and owned shares of stock of the corporation,* (2) that such special dividend was in addition to all other amounts payable or to be payable to such [individuals] *persons* or for their benefit by reason of their interest in the corporation, and (3) that such distribution has been made to or for the benefit of such [individuals] *persons* in proportion to the par value of the shares of stock of the corporation owned by each, except that if the corporation has more than one class of stock the certificate

shall contain a statement that the articles of incorporation provide a method for the apportionment of such special dividend among such [individuals] persons, and that the amount certified has been distributed in accordance with the method so provided."

To correct the fault or disability in the form of the repetitive taxation it is recommended that the above amendment be made, which will provide for the distribution of the special dividend in lieu of exemption from the 12½ per cent Federal corporation tax to all stockholders of China trade act corporations resident in China, the United States, and possessions of the United States, and to individual American and Chinese stockholders wherever resident. This will not give exemption to alien stockholders of China trade act corporations who are not resident in China, the United States, or possessions of the United States. From the standpoint of corporation tax this will put American and Chinese capital in China trade act corporations on an equality with British and Chinese capital doing business in China organized under Hongkong companies ordinances, except that China trade act corporations will still be subject to a capital stock tax of \$1 on each \$1,000 of the fair capital stock value, whereas British-China companies pay a much smaller annual fee of only \$0.40 on each \$1,000 of paid-up capital stock outstanding.

The chairman of the Committee on the Judiciary asked the Secretaries of the Treasury and Commerce for their views on the amendments proposed by H. J. Res. 149, which was reintroduced as H. R. 7190 without change of the two proposed amendments of the revenue provisions of the law.

Hon. A. W. Mellon, Secretary of the Treasury, answered as follows:

JANUARY 25, 1924.

HON. GEORGE S. GRAHAM,

Chairman Judiciary Committee, House of Representatives.

DEAR MR. CHAIRMAN: I have your letter of January 23, requesting the views of the Treasury Department with reference to the provisions of H. J. Res. 149, which amends the revenue act with respect to China trade corporations.

The present exemption of a corporation organized under the China trade act is in proportion to the amount of stock owned by citizens of the United States resident in China. The proposed amendment would extend this exemption in proportion to the amount of stock owned by persons resident in China, the United States, or possessions of the United States, and by individual citizens of the United States or China, wherever resident. The principle of this change is substantially the same as of the amendment which passed the House last year and had the approval of the Treasury. I know of no reason why the Treasury's position on this matter should be changed, and I am glad to approve the first proposed amendment.

The second suggested amendment would make dividends from a corporation organized under the China trade act exempt from tax in the hands of residents of China, regardless of citizenship. This amendment would make a special case of those residents of China who own stock in corporations organized under the China trade act, and would provide for treatment of dividends from such corporations different from that accorded to other income received by citizens of the United States resident outside the United States. An American citizen resident outside of the United States and receiving income from sources outside the United States is taxed upon such income. Under this amendment, however, an American citizen resident in China and receiving income from a corporation organized under the China trade act would not be taxed.

Very truly yours,

A. W. MELLON,
Secretary of the Treasury.

Hon. Herbert Hoover, Secretary of Commerce, answered, giving at length the reasons for all of the proposed amendments and pointed out the urgent need of the two amendments of the revenue provisions of the law as follows:

JANUARY 25, 1924.

HON. GEORGE S. GRAHAM,
*Chairman Judiciary Committee,
 House of Representatives, Washington, D. C.*

DEAR MR. GRAHAM: I am in receipt of your letter of January 23, 1923, inclosing copy of H. J. Res. 149, amending the China trade act, 1922, and the revenue act of 1921. My recommendations regarding these amendments are specifically as follows:

* * * * *

Section 264: This amendment would extend the principle of the present exemption from the 12½ per cent Federal corporation tax to persons resident in China, the United States, or possessions of the United States, and to individual citizens of the United States or China wherever resident.

This department is in accord with the extension of this principle in this section, and therefore I am glad to approve this amendment.

Section 213 (b) (13): While this amendment constitutes a departure from our rule of taxation by allowing exemption of income tax to persons resident in China to the extent of the dividends received from China trade act corporations, it is necessary that this relief be accorded to stockholders of the China trade act corporations resident in China if they are to be placed on a basis of equality with their British competitors. In this connection it is well to note that British stockholders in Hongkong corporations are not taxed as to their individual income from those corporations so long as they are residents of China. This competitive situation is peculiar to China and applies to no other part of the world, and this in itself seems sufficient justification for a departure from our present procedure. British stockholders in Hongkong companies are thus encouraged to maintain their residences in China and reinvest their earnings there, and this has been a very important feature in building up the investments of British capital in industrial enterprises in China. As I view this amendment it is a direct encouragement to American citizens to reside in China, incorporate under the China trade act, and develop American trade with that country. Without this amendment the effectiveness of the China trade act, otherwise an admirable vehicle for the conduct of American business with China, is distinctly impaired. I believe this amendment ought to be made.

In connection with this question of United States home taxation applying in full force to American interests doing business in China, I wish to call attention to one point which, as far as I can recollect, I have never seen stressed. This is that our Federal corporation and individual income taxes were first imposed in 1913. Up until 1916 these did not become seriously burdensome. They reached their peak in 1918, but up to 1920 on account of the absence of competition in China the burden was passed on. On the resumption in 1920 of the keen competition, growing more keenly ever since, for all classes of business in China, the American merchant in China on account of this burden of home taxation, to which none of his competitors are subjected, is being or will be driven out of that market of great future potentialities unless American interests are accorded "equality of opportunity" by giving them relief from United States home taxation. The particular point in this connection is that previous to the war our nationals in China were not subject to Federal taxation, but since the war the imposition of Federal taxation in full force upon American interests doing business is a handicap to which they have never before been subjected, and in brief by this application in full force of our Federal taxation on American interests in China we are actually "closing the door" on our own nationals in China instead of some one else doing so.

In conclusion, I therefore very heartily approve, indorse, and recommend these amendments of the China trade act and the revenue act of 1921 and trust your committee can see its way to favorably report them.

Faithfully yours,

HERBERT HOOVER,
Secretary of Commerce.

A further opinion of the Secretary of the Treasury with reference to the working of the tax features of this legislation is set forth in the following correspondence between the chairman of the Committee on the Judiciary and the Secretary of the Treasury:

MARCH 12, 1924.

THE SECRETARY OF THE TREASURY.

SIR: By direction of the House Committee on the Judiciary, I am forwarding to you H. R. 7190, entitled "A bill to amend the China trade act of 1922," for the purpose of having you furnish the committee with an opinion on that portion of the bill beginning on page 5, line 14, section 264, and running thence to the end of the bill on page 7, as to what changes the enactment of this bill into law will make in the revenue act of 1921.

Your attention is particularly called to the following questions:

1. Do these changes effect anything beyond relieving the corporations organized under the China trade act from the payment of taxes imposed by section 230 of the revenue act of 1921?

2. A corporation created under the China trade act is thereby declared to be a domestic corporation. Taxpayers are relieved under the revenue act from payment of the normal tax on dividends received from domestic corporations. Is a citizen of the United States, holding stock in a China trade act corporation and receiving dividends therefrom, relieved from paying the normal tax thereon except so far as under these amendatory provisions amounts may be distributed as dividends to or for the stockholder's benefit?

3. What is the status of a citizen of the United States resident in China with respect to the normal tax on dividends received from a corporation created under the China trade act?

Thanking you for an early reply and expression of your views for our guidance,

Respectfully yours,

GEORGE S. GRAHAM.

MARCH 15, 1924.

HON. GEORGE S. GRAHAM,
*Chairman Judiciary Committee,
House of Representatives.*

DEAR MR. CHAIRMAN: I have your letter of March 12, 1924, with reference to those provisions of the bill (H. R. 7190) which affect the internal revenue laws. My general views on these proposed amendments are contained in my letter to you under date of January 25, 1924, copy of which is inclosed for your convenience. Your specific inquiries with reference to the proposed amendments are answered below in order:

(1) The proposed amendments not only extend the exemption of the corporation organized under the China trade act so that it shall be in proportion to the stock of the corporation owned by persons resident in China, the United States, or possessions of the United States, and by individual citizens of the United States or China, wherever resident, but also exempts from tax in the hands of residents of China, regardless of citizenship, dividends from such a corporation.

(2) A citizen of the United States other than one a resident of China must, under the proposed bill as well as under the existing law, pay both the normal tax and surtax on dividends received by him from a corporation organized under the China trade act. This is the result of the amendment of subdivision (a) of section 216 contained in section 27 of the China trade act, 1922, which is not changed by the proposed bill.

(3) Under section 12 of the proposed bill dividends received by a citizen of the United States resident in China are subject neither to the normal tax nor to the surtax.

Very truly yours,

A. W. MELLON,
Secretary of the Treasury.

This shows that while the feature of repetitive taxation is corrected the legislation protects against evasion of Federal taxes in that dividends of China trade act corporations to persons other than those resident in China are subject to both normal and surtaxes. If the fault or disability of repetitive taxation is to be corrected, an

amendment the equivalent of the above is necessary, and as the principle has been established it is felt that this correction can be made to best advantage by amending this provision of the law as above recommended.

SEC. 26. (Sec. 213 (b) (13).) In the case of [an individual] *a person*, amounts distributed as dividends to or for his benefit by a corporation organized under the China trade act, 1922, if, at the time of such distribution, he is a [citizen] *resident of China* [resident therein] and the equitable right to the income of the shares of stock of the corporation is in good faith vested in him.

This legislation as it now stands only accords the right to exclude from gross income dividends from China trade act corporations to individual citizens of China resident therein. To meet the special and unusual condition which prevails in China and to put stockholders of China trade act corporations resident in China on equality with stockholders of British corporations organized under the Hongkong companies ordinances resident in China, it is recommended that the right be accorded to exclude dividends from China trade act corporations in calculating the gross income of all classes of China trade act stockholders resident in China. If this privilege is not accorded China trade act stockholders resident in China they will not to this extent be put on an equal footing with stockholders of British-China companies resident in China, which will result in the continuation of American capital doing business in China under Hongkong companies ordinances and under British management.

The British make a special case of the Crown colony of Hongkong in that this is the only self-legislative colony of the British Empire which imposes no corporation taxes and also no individual income taxes. Hongkong legislative ordinances are extended by British orders in council by exercising the right of extraterritoriality under existing treaties to cover British corporations and British citizens resident in China. As already pointed out the test of incidence of British companies is "Where does the recipient reside?" and not "Where are the profits kept?" By this fundamental rule of British taxation immunity from the United Kingdom corporation and individual income taxes is given to all British interests resident in China on income from sources within China. To put American interests resident in China on an equality with other nationals resident in China, particularly British, it is necessary to extend this exemption proposed and, therefore, justify this special treatment of dividends from China trade act corporations to stockholders resident in China, as pointed out by Secretary of Commerce Hoover's letter quoted above. In considering this amendment it should be kept clearly in mind that it benefits only those persons resident in China.

NO OTHER FEDERAL INCORPORATING LAWS TO BE EXTENDED TO CHINA.

SEC. 29. *Hereafter no corporation shall be created under any law of the United States extended over citizens of the United States in China, for the purpose of engaging in business within China.*

The effect of this amendment would be limited largely to discontinuing the further incorporation of concerns in China under the act of Congress of March 2, 1903, which was an act for formation of corporations in Alaska, or what is known as the Alaska Code. Authority for federally incorporating American concerns in China

under the act of March 2, 1903, is based on the case of the United States Ex Rel. v. Paul McCrae, decided by the United States Court of China (case No. 586, filed June 9, 1917). This act, as far as incorporating in Alaska is concerned, was replaced by a subsequent act of the Legislature of Alaska, entitled, "An act to make uniform the law of business corporations in the Territory of Alaska," approved April 28, 1913 (Session Laws of Alaska 13, ch. 58, p. 121). This act of the Legislature of Alaska was passed under authority of the organic act, creating a Territorial form of government for Alaska. Section 3 of the act of the Legislature of Alaska provided that "except as herein provided, all laws now in force in Alaska shall continue in full force and effect until altered, amended, or repealed by Congress or by the legislature."

There were only two concerns incorporated under this ruling in 1917, none in 1918, but a total of 122 were acted on before September 19, 1922, the date of coming into effect of the China trade act. Since September 20, 1922, there have been 33 concerns incorporated, 6 after September 20, 1922, 26 in 1923, and 1, so far as advised, in 1924.

Inasmuch as Congress has enacted the China trade act, a Federal law for incorporating to engage in business within China, there is no reason that any other expedient should be resorted to, especially one which permits less strict supervision than is provided for in the China trade act provided it is amended as heretofore recommended in this report.

There is also printed herewith a communication received from the Secretary of Commerce on March 11, 1924, urging the enactment of this legislation from an emergency standpoint to correct the faults of this legislation which may cause embarrassment to American interests in China.

MARCH 11, 1924.

HON. GEORGE S. GRAHAM,
*Chairman Committee on the Judiciary,
House of Representatives, Washington, D. C.*

DEAR MR. GRAHAM: Referring to your letter of January 23, 1924, inclosing copy of House Joint Resolution 149 (which has since been introduced as H. R. 7190), amending the China trade act, 1922, and asking for my views regarding the need for the proposed amendments. My letter of January 25, 1924, set forth my views and recommendations at length in favor of all the proposed amendments since incorporated in H. R. 7190.

As to the urgent need of these amendments Registrar Rhea makes the following statement:

"The primary purposes which it was contemplated this legislation would accomplish can be summarized as follows:

"1. Put American interests doing business in China on an 'equality' with other nationals doing business in China from the standpoint of home corporation and individual income taxation;

"2. A means of inducing Chinese capital to participate with American capital in undertakings in China under American control and management; and

"3. Provide a uniform and practical manner for creating corporations under a Federal law to do business in China under the protection and control of American laws administered by the United States (Federal) Court for China, American consular courts in China, and a registrar of companies in China, and also to accord to such undertakings in China the greatest possible benefit from the American Diplomatic and Consular Services in China.

"The law as passed and as it now stands does not fully accomplish any of the above primary purposes and in addition is faulty and burdensome to the following extent:

"1. The law is faulty in that it imposes a large measure of repetitive or double taxation on dividends paid by China trade corporations, which repetitive taxation is not imposed on the dividends of any class of American domestic corporations.

"2. The law is faulty in that it does not provide the full measure of American control and management of China trade act corporations, which was intended and which is necessary for the proper and safe administration of the act.

"3. The law is burdensome in that it requires the withholding at source of these repetitive taxes on dividends to nonresident alien shareholders, which is not required in connection with the dividends paid by any class of American domestic corporations.

"4. The law is incomplete in that it does not provide a uniform means for Federal incorporation to engage in business within China."

Regarding fault No. 1, the repetitive taxation features of the act is not yet generally known in China, but the interests considering incorporating are aware that there is not sufficient advantage in the law as it now stands to warrant their incorporating under it. Further, it is my opinion when some of the concerns realize the penalties imposed in the form of the repetitive taxes they will change to State or to the United States Court for China incorporations. The net result of this is that responsible American interests in China are not incorporating under the China trade act, and practically the only concerns who are doing so are either small concerns owned by individual Americans and Chinese resident in China or irresponsible parties whose principal purpose is to secure the advantage of American prestige and the protection of American laws and courts in China.

This brings to a head fault No. 2, and Registrar Rhea advises me he is confronted with very serious difficulty owing to the fact that the principal officers of some of the China trade act corporations are not American citizens upon whom he can obtain American legal services in China. It is urgent this fault be corrected at the earliest possible date. Otherwise American prestige in China may be seriously damaged.

Regarding No. 3, the burden of withholding taxes at source is a very complicated one and is a situation which is not understood by the officials of these concerns in China. The requirements of the China trade act are so unusual that the concerns are liable to penalties in a way that applies to no other American corporations.

I therefore feel warranted in urging on your committee what I think can properly be termed an emergency occasion for correcting the above faults of the act.

I wish to also add that Registrar Rhea feels that the situation requires his immediate return to China, whereas against this it has been the department's purpose to hold him in Washington until such time as action may be had on these proposed amendments. The reason for this is that Mr. Rhea is the only employee of this department who has had contact with this situation in China and who has had such practical experience with the actual working of the law as will enable him to present the situation from this standpoint.

I trust that you will appreciate the attitude of this department in our efforts to make a success of this law but as it now stands we are confronted with difficulties which we are fearful may reflect on the prestige and good name of American interests in China.

Very truly yours,

HERBERT HOOVER,
Secretary of Commerce.

The above communication shows that there is need of immediate action to correct this situation, especially in assuring American control and management of corporations created under this legislation.

In order that ready reference may be had to the present law and to the proposed amendments, there is included in this report a copy of an existing law that this bill seeks to amend.

CHINA TRADE ACT, 1922.

[PUBLIC—No. 312—67TH CONGRESS.]

[H. R. 4810.]

AN ACT To authorize the creation of corporations for the purpose of engaging in business within China

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this act may be cited as the "China trade act, 1922."

DEFINITIONS.

SEC. 2. When used in this act, unless the context otherwise indicates—

(a) The term "person" includes individual, partnership, corporation, and association;

(b) The term "China" means (1) China including Manchuria, Thibet, Mongolia, and any territory leased by China to any foreign government, (2) the Crown Colony of Hongkong, and (3) the Province of Macao;

(c) The terms "China trade act corporation" and "corporation" mean a corporation chartered under the provisions of this act.

(d) The term "Federal district court" means any Federal district court, the United States Court for China, and the Supreme Court of the District of Columbia;

(e) The term "Secretary" means the Secretary of Commerce; and

(f) The term "registrar" means the China trade act registrar appointed under section 3.

REGISTRAR.

SEC. 3. The Secretary is authorized to designate as China trade act registrar an officer of the Department of Commerce. The official station of the registrar shall be in China at a place to be designated by the Secretary. All functions vested in the registrar by this act shall be administered by him under the supervision of the Secretary; except that upon appeal to the Secretary, in such manner as he shall by regulation prescribe, any action of the registrar may be affirmed, modified, or set aside by the Secretary as he deems advisable.

ARTICLES OF INCORPORATION.

SEC. 4. (a) Five or more individuals (hereinafter in this act referred to as "incorporators"), a majority of whom are citizens of the United States, may, as hereinafter in this act provided, form a District of Columbia corporation for the purpose of engaging in business within China.

(b) The incorporators may adopt articles of incorporation which shall be filed with the Secretary at his office in the District of Columbia and may thereupon make application to the Secretary for a certificate of incorporation in such manner and form as shall be by regulation prescribed. The articles of incorporation shall state—

(1) The name of the proposed China trade act corporation, which shall end with the legend "Federal Inc. U. S. A.," and which shall not, in the opinion of the Secretary, be likely in any manner to mislead the public;

(2) The location of its principal office, which shall be in the District of Columbia;

(3) The particular business in which the corporation is to engage;

(4) The amount of the authorized capital stock, the designation of each class of stock, the terms upon which it is to be issued, and the number and par value of the shares of each class of stock;

(5) The duration of the corporation, which may be for a period of not more than twenty-five years, but which may, upon application of the corporation and payment of the incorporation fee, be successively extended by the Secretary for like periods;

(6) The names and addresses of individuals, a majority of whom are citizens of the United States and at least one of whom is a resident of the District of Columbia, to be designated by the incorporators, who shall serve as temporary directors; and

(7) The fact that an amount equal to 25 per centum of the amount of the authorized capital stock has been in good faith subscribed and paid in cash, or, in accordance with the provisions of section 8, in real or personal property which has been placed in the custody of the directors.

(c) A China trade act corporation shall not engage in the business of discounting bills, notes, or other evidences of debt, of receiving deposits, of buying and selling bills of exchange, or of issuing bills, notes, or other evidences of debt, for circulation as money; nor engage in any other form of banking business; nor engage in any form of insurance business.

CERTIFICATE OF INCORPORATION.

SEC. 5. The Secretary shall, upon the filing of such application, issue a certificate of incorporation certifying that the provisions of this act have been complied with and declaring that the incorporators are a body corporate if (a) an incorporation fee of \$100 has been paid him, (b) he finds that the articles of incorporation and statements therein conform to the requirements of, and that the incorporation is authorized by, this act, and (c) he finds that such corporation will aid in developing markets in China for goods produced in the United States. A copy of the articles of incorporation shall be made a part of the certificate of incorporation and printed in full thereon. Any failure, previous to the issuance of the certificate of incorporation, by the incorporators or in respect to the application for the certificate of incorporation to conform to any requirement of law which is a condition precedent to such issuance, may not subsequent thereto be held to invalidate the certificate of incorporation or alter the legal status of any act of a China trade act corporation, except in proceedings instituted by the registrar for the revocation of the certificate of incorporation.

GENERAL POWERS.

SEC. 6. In addition to the powers granted elsewhere in this act, a China trade act corporation—

- (a) Shall have the right of succession during the existence of the corporation;
- (b) May have a corporate seal and alter it at pleasure;
- (c) May sue and be sued;
- (d) Shall have the right to transact the business authorized by its articles of incorporation and such further business as is properly connected therewith or necessary and incidental thereto;
- (e) May make contracts and incur liabilities;
- (f) May acquire and hold real or personal property, necessary to effect the purpose for which it is formed, and dispose of such property when no longer needed for such purposes;
- (g) May borrow money and issue its notes, coupon or registered bonds, or other evidences of debt, and secure their payment by a mortgage of its property; and
- (h) May establish such branch offices at such places in China as it deems advisable.

SHARES OF STOCK.

SEC. 7. Each share of the original or any subsequent issue of stock of a China trade act corporation shall be issued at par value only, and shall be paid for in cash or in accordance with the provisions of section 8, in real or personal property which has been placed in the custody of the directors. No such share shall be issued until the amount of the par value thereof has been paid the corporation; and when issued, each share shall be held to be full paid and nonassessable; except that if any share is, in violation of this section, issued without the amount of the par value thereof having been paid to the corporation, the holder of such share shall be liable in suits by creditors for the difference between the amount paid for such share and the par value thereof.

SEC. 8. No share of stock of a China trade act corporation shall, for the purposes of section 7 or of paragraph (7) of subdivision (b) of section 4, be held paid in real or personal property unless (1) a certificate describing the property and stating the value at which it is to be received has been filed by the corporation with the Secretary or the registrar in such manner as shall be by regulation prescribed, and a fee to be fixed by the Secretary or the registrar, respectively, to cover the cost of any necessary investigation has been paid, and (2) the Secretary or the registrar, as the case may be, finds and has certified to the corporation that such value is not more than the fair market value of the property.

BY-LAWS.

SEC. 9. The by-laws may provide—

(a) The time, place, manner of calling, giving notice, and conduct of, and determination of a quorum for the meetings, annual or special, of the stockholders or directors;

(b) The number, qualifications, and manner of choosing and fixing the tenure of office and compensation of all directors; but the number of such directors shall be not less than three, and a majority of the directors and a majority of the officers holding the office of president, treasurer, or secretary, or a corresponding office, shall be citizens of the United States resident in China; and

(c) The manner of calling for and collecting payments upon shares of stock, the penalties and forfeitures for nonpayment, the preparation of certificates of the shares, the manner of recording their sale or transfer, and the manner of their representation at stockholders' meetings.

STOCKHOLDERS' MEETINGS.

SEC. 10. (a) Within six months after the issuance of the certificate of incorporation of a China trade act corporation there shall be held a stockholders' meeting either at the principal office or a branch office of the corporation. Such meeting shall be called by a majority of the directors named in the articles of incorporation and each stockholder shall be given at least ninety days' notice of the meeting either in person or by mail. The holders of two-thirds of the voting shares shall constitute a quorum at such meeting authorized to transact business. At this meeting or an adjourned meeting thereof a code of by-laws for the corporation shall be adopted by a majority of the voting shares represented at the meeting.

(b) The following questions shall be determined only by the stockholders at a stockholders' meeting:

(1) Adoption of the by-laws;

(2) Amendments to the articles of incorporation or by-laws;

(3) Authorization of the sale of the entire business of the corporation or of an independent branch of such business;

(4) Authorization of the voluntary dissolution of the corporation; and

(5) Authorization of application for the extension of the period of duration of the corporation.

(c) The adoption of any such amendment or authorization shall require the approval of at least two-thirds of the voting shares. No amendment to the articles of incorporation or authorization for dissolution or extension shall take effect until (1) the corporation files a certificate with the Secretary stating the action taken, in such manner and form as shall be by regulation prescribed, and (2) such amendment or authorization is found and certified by the Secretary to conform to the requirements of this act.

(d) A certified copy of the by-laws and amendments thereof and of the minutes of all stockholders' meetings of the corporation shall be filed with the registrar.

DIRECTORS.

SEC. 11. The directors designated in the articles of incorporation shall, until their successors take office, direct the exercise of all powers of a China trade act corporation except such as are conferred upon the stockholders by law or by the articles of incorporation or by-laws of the corporation. Thereafter the directors elected in accordance with the by-laws of the corporation shall direct the exercise of all powers of the corporation except such as are so conferred upon the stockholders. In the exercise of such powers the directors may appoint and remove and fix the compensation of such officers and employees of the corporation as they deem advisable.

REPORTS AND INSPECTION OF RECORDS.

SEC. 12. (a) For the purposes of this act the fiscal year of a China trade act corporation shall correspond to the calendar year. The corporation shall make and file with the registrar, in such manner and form and at such time as shall be by regulation prescribed, a report of its business for each such fiscal year and of its financial condition at the close of the year. The corporation shall furnish a true copy of the report to each of its stockholders.

(b) The registrar shall file with the Secretary copies of all reports, certificates, and certified copies received or issued by the registrar under the provisions of this act. The Secretary shall file with the registrar copies of all applications for a certificate of incorporation and certificates received or issued by the Secretary under the provisions of this act. All such papers shall be kept on record in the offices of the registrar and the Secretary, and shall be available for public inspection under such regulations as may be prescribed.

DIVIDENDS.

SEC. 13. Dividends declared by a China trade act corporation shall be derived wholly from the surplus profits of its business.

REVOCATION OF CERTIFICATE OF INCORPORATION.

SEC. 14. The registrar may, in order to ascertain if the affairs of a China trade act corporation are conducted contrary to any provision of this act, or any other law, or any treaty of the United States, or the articles of incorporation or by-laws of the corporation, investigate the affairs of the corporation. The registrar, whenever he is satisfied that the affairs of any China trade act corporation are or have been so conducted, may institute in the United States Court for China proceedings for the revocation of the certificate of incorporation of the corporation. The court may revoke such certificate if it finds the affairs of such corporation have been so conducted. Pending final decision in the revocation proceedings the court may, at any time, upon application of the registrar or upon its own motion, make such orders in respect to the conduct of the affairs of the corporation as it deems advisable.

SEC. 15. (a) For the efficient administration of the functions vested in the registrar by this act, he may require, by subpoena issued by him or under his direction, (1) the attendance of any witness and the production of any book, paper, document, or other evidence from any place in China at any designated place of hearing in China, or, if the witness is actually resident or temporarily sojourning outside of China, at any designated place of hearing within fifty miles of the actual residence or place of sojourn of such witness, and (2) the taking of a deposition before any designated person having power to administer oaths. In the case of a deposition the testimony shall be reduced to writing by the person taking the deposition or under his direction, and shall then be subscribed by the deponent. The registrar, or any officer, employee, or agent of the United States authorized in writing by him, may administer oaths and examine any witness. Any witness summoned or whose deposition is taken under this section shall be paid the same fees and mileage as are paid witnesses in the courts of the United States.

(b) In the case of failure to comply with any subpoena or in the case of the contumacy of any witness before the registrar, or any individual so authorized by him, the registrar or such individual may invoke the aid of any Federal district court. Such court may thereupon order the witness to comply with the requirements of such subpoena and to give evidence touching the matter in question. Any failure to obey such order may be punished by such court as a contempt thereof.

(c) No person shall be excused from so attending and testifying or deposing, nor from so producing any book, paper, document, or other evidence on the ground that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no natural person shall be prosecuted or subjected to any penalty of forfeiture for or on account of any transaction, matter, or thing as to which, in obedience to a subpoena and under oath, he may so testify, except that no person shall be exempt from prosecution and punishment for perjury committed in so testifying.

(d) For the efficient administrations of the functions vested in the registrar by this act, he, or any officer, employee, or agent of the United States authorized in writing by him, shall at all reasonable times for the purpose of examination have access to and the right to copy any book, account, record, paper, or correspondence relating to the business or affairs of a China trade act corporation. Any person who upon demand refuses the registrar or any duly authorized officer, employee, or agent such access or opportunity to copy, or hinders, obstructs, or resists him in the exercise of such right, shall be liable to a penalty of not more than \$5,000 for each such offense. Such penalty shall be recoverable in a civil suit brought in the name of the United States.

SEC. 16. In case of the voluntary dissolution of a China trade act corporation or revocation of its certificate of incorporation, the directors of the corporation shall be trustees for the creditors and stockholders of the corporation; except that upon application to the United States Court for China by any interested party, or upon the motion of any court of competent jurisdiction in any proceeding pending before it, the court may in its discretion appoint as the trustees such persons, other than the directors, as it may determine. The trustees are invested with the powers, and shall do all acts, necessary to wind up the affairs of the corporation and divide among the stockholders according to their respective interests the property of the corporation remaining after all obligations against it have been settled. For the purposes of this section the trustees may sue and be sued in the name of the corporation and shall be jointly and severally liable to the stockholders and creditors of the corporation to the extent of the property coming into their hands as trustees.

REGULATIONS.

SEC. 17. (a) The Secretary is authorized to make such regulations as may be necessary to carry into effect the functions vested in him or in the registrar by this act.

(b) That the Secretary is authorized to prescribe and fix the amount of such fees (other than the incorporation fee) to be paid him or the registrar for services rendered by the Secretary or the registrar to any person in the administration of the provisions of this act. All fees and penalties paid under this act shall be covered into the Treasury of the United States as miscellaneous receipts.

PENALTIES.

SEC. 18. No stockholder, director, officer, employee, or agent of a China trade act corporation shall make, issue, or publish any statement, written or oral, or advertisement in any form, as to the value or as to the facts affecting the value of stocks, bonds, or other evidences of debt, or as to the financial condition or transactions, or facts affecting such condition of transactions, of such corporation if it has issued or is to issue stocks, bonds, or other evidences of debt, whenever he knows or has reason to believe that any material representation in such statement or advertisement is false. No stockholder, director, officer, employee, or agent of a China trade act corporation shall, if all the authorized capital stock thereof has not been paid in, make, issue, or publish any written statements or advertisement, in any form, stating the amount of the authorized capital stock without also stating as the amount actually paid in, a sum not greater than the amount paid in. Any person violating any provisions of this section shall, upon conviction thereof, be fined not more than \$5,000 or imprisoned not more than ten years or both.

SEC. 19. No individual, partnership, or association, or corporation not incorporated under this act or under a law of the United States shall engage in business within China under a name in connection with which the legend "Federal Inc. U. S. A." is used. Any person violating this section shall upon conviction thereof be fined not more than \$1,000 for each violation.

JURISDICTION OF SUITS AGAINST CORPORATION.

SEC. 20. That the Federal district courts shall have exclusive original jurisdiction of all suits (except as provided by the act entitled "An act creating a United States Court for China and prescribing the jurisdiction thereof," approved June 30, 1906, as amended) to which a China trade act corporation, or a stockholder, director, or officer thereof in his capacity as such, is a party. Suit against the corporation may be brought in the United States Court for China, or in the Supreme Court of the District of Columbia, or in the Federal district court for any district in which the corporation has an agent and is engaged in doing business.

FEDERAL TAXATION.

SEC. 21. Title II of the revenue act of 1921 is amended by adding at the end thereof a new section to read as follows:

"CHINA TRADE ACT CORPORATIONS.

"SEC. 264. (a) That for the purpose only of the tax imposed by section 230 there shall be allowed, in the case of a corporation organized under the China

trade act, 1922, a credit of an amount equal to the proportion of the net income derived from sources within China (determined in a similar manner to that provided in section 217) which the par value of the shares of stock of the corporation owned on the last day of the taxable year by individual citizens of the United States or China, resident in China, bears to the par value of the whole number of shares of stock of the corporation outstanding on such date: *Provided*, That in no case shall the amount by which the tax imposed by section 230 is diminished by reason of such credit exceed the amount of the special dividend certified under subdivision (b) of this section.

"(b) Such credit shall not be allowed unless the Secretary of Commerce has certified to the commissioner (1) the amount which, during the year ending on the date of filing the return, the corporation has distributed as a special dividend to or for the benefit of such individuals as on the last day of the taxable year were citizens of the United States or China, resident in China, and owned shares of stock of the corporation; (2) that such special dividend was in addition to all other amounts, payable or to be payable to such individuals or for their benefit, by reason of their interest in the corporation; and (3) that such distribution has been made to or for the benefit of such individuals in proportion to the par value of the shares of stock of the corporation owned by each; except that if the corporation has more than one class of stock, the certificate shall contain a statement that the articles of incorporation provide a method for the apportionment of such special dividend among such individuals, and that the amount certified has been distributed in accordance with the method so provided.

"(c) For the purposes of this section shares of stock of a corporation shall be considered to be owned by the person in whom the equitable right to the income from such shares is in good faith vested.

"(d) As used in this section the term 'China' shall have the same meaning as when used in the China trade act, 1922.

SEC. 22. Subdivision (b) of section 230 of the revenue act of 1921 is amended to read as follows:

"(b) For each calendar year thereafter, 12½ per centum of the amount of the net income in excess of the credits provided in sections 236 and 264."

SEC. 23. Subdivision (f) of section 238 of the revenue act of 1921 is amended by adding after the figures "262" the word and figures "or 264."

SEC. 24. Subdivision (c) of section 240 of the revenue act of 1921 is amended by adding at the end thereof a new sentence to read as follows: "A corporation organized under the China trade act, 1922, shall not be deemed to be affiliated with any other corporation within the meaning of this section."

SEC. 25. That section 2 of the revenue act of 1921 is amended by adding at the end thereof a new paragraph to read as follows:

"(12) A corporation organized under the China trade act, 1922, shall, for the purposes of this act, be considered a domestic corporation."

SEC. 26. Subdivision (b) of section 213 of the revenue act of 1921 is amended by striking out the period at the end of paragraph (12) thereof and inserting in lieu thereof a semicolon, and by adding after paragraph (12) a new paragraph to read as follows:

"(13) In the case of an individual, amounts distributed as dividends to or for his benefit by a corporation organized under the China trade act, 1922, if, at the time of such distribution, he is a citizen of China resident therein and the equitable right to the income of the shares of stock of the corporation is in good faith vested in him."

SEC. 27. Subdivision (a) of section 216, paragraph (6) of subdivision (a) of section 234, and paragraph (3) of subdivision (a) of section 245, of the revenue act of 1921, are amended by inserting in each after the word and figures "section 262" a comma and the words "and other than a corporation organized under the China trade act, 1922."

RESERVATION OF RIGHT TO AMEND.

SEC. 28. The Congress of the United States reserves the right to alter, amend, or repeal any provision of this act.

Approved, September 19, 1922.

